

**DOCUMENT RESUME**

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**[Protest against Rejection of Proposal and Exclusion from Competitive Range]. B-191762. August 10, 1978. 4 pp.**

**Decision re: Advanced Design Corp.; by Robert F. Keller, Acting Comptroller General.**

**Contact: Office of the General Counsel: Procurement law 1.**

**Organization Concerned: Department of the Army: Army Mobility Equipment Research and Development Command.**

**Authority: 56 Comp. Gen. 201. 56 Comp. Gen. 208. B-189730 (1978). B-182558 (1975). B-106002 (1976). B-178887 (1974). B-176077(6) (1973). B-191245 (1978). B-166904 (1976). B-181170 (1974). B-187160 (1977).**

**A company protested the rejection of its proposal and contended that it was improperly excluded from the competitive range. The determination that a proposal is not technically acceptable and, therefore, not within the competitive range is within the procuring agency's discretion. Allegations concerning unfair evaluation of the proposal are mere speculation and must be rejected. (BRS)**

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M.B. and  
Phoebe

## DECISION

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-191762

DATE: August 10, 1978

MATTER OF: Advanced Design Corporation

## DIGEST:

1. Determination that proposal is not technically acceptable and therefore not within competitive range is within procuring agency's discretion and will not be disturbed absent clear showing that it was arbitrary or unreasonable.
2. Where no evidence is presented to support alleged unfair evaluation of proposal by procuring agency, allegation is mere speculation and must be rejected.

Request for quotations (RFQ) No. DAAK70-78-Q-0006 was issued on December 1, 1977, by the United States Army Mobility Equipment Research and Development Command (MERADCOM) covering production engineering services. Under the contract, production engineering services shall be performed to confirm that existing technical data packages (TDP's) are in fact producible using normal line production methods. Eight proposals were received in response to the solicitation. Advanced Design Corporation (ADC) submitted a technical proposal in response to the RFQ which was found to be technically unacceptable by MERADCOM and outside the competitive range. Thus, ADC was not asked to submit a best and final offer.

ADC filed a protest in our Office against the rejection of its proposal. ADC contends that it was improperly excluded from the competitive range. Further, ADC alleges that MERADCOM evaluated its proposal unfairly and in a manner different from the other proposals.

The protester contends that its proposal was technically acceptable and should not have been excluded from the competitive range because it has been awarded and has successfully completed prior MERADCOM production

engineering and drafting service contracts. Further, ADC posits that it has the technical personnel, facilities, and proven experience to more than adequately perform the services requested in the RFQ.

In its administrative report, MERADCOM listed several reasons for the rejection of ADC's proposal. The report stated:

"The ADC proposal was determined to not be in the competitive range because it did not include adequate detail of how specific tasks requirements would be accomplished. The proposal repeats narrative portions of the MERADCOM Standard Practice Manual in presenting the technical plan. No Quality Assurance Plan is presented. Personnel staff is inadequate in size and skill to support MERADCOM requirements. The management structure is not presented. No work experience was indicated in numerous areas covered by the solicitation."

Additionally, MERADCOM's evaluation team found the methods of how evaluations and reviews are to be conducted by ADC with subcontractors to achieve quality control inadequately specified or emphasized. Further, ADC's plan to use part-time personnel, as necessary, was determined by the evaluators to be inadequate in size and skill in support of MERADCOM requirements because it breaks task continuity and tracing capability. Finally, the evaluators concluded that ADC lacks work experience in power generation, counter intrusion devices, and the petroleum, oil, lubrication area.

ADC argues that a detailed narrative on each MERADCOM task requirement is presented in its technical proposal. The protester further argues that both the size and skill of its personnel are sufficient to perform work tasks in support of MERADCOM requirements, and that the RFQ does not contain a minimum requirement of type and number of personnel necessary for work accomplishment. ADC also contends that it has the requisite experience necessary to perform the services detailed in the RFQ, as evidenced by its successful completion of four MERADCOM engineering contracts. MERADCOM rebuts this last argument by stating that this contract spans

significantly broader and more diversified technical areas of equipment than those contracts previously performed by the protester.

As is evident from the above, there is strong disagreement between ADC and MERADCOM as to the technical and organizational deficiencies raised by the evaluation team. However, we do not consider it appropriate to resolve these differences, since the issues in dispute involve technical matters and, as the parties recognize, it is not our function to independently evaluate the technical adequacy of proposals. Westinghouse Electric Corporation, B-189730, March 8, 1978, 78-1 CPD 181; Decision Sciences Corporation, B-182558, March 24, 1975, 75-1 CPD 175. The overall determination of the relative desirability and technical adequacy of proposals is primarily a function of the procuring agency, which enjoys a reasonable range of discretion in the evaluation of proposals. Struthers Electronics Corporation, B-186002, September 10, 1976, 76-2 CPD 231; Kirschner Associates, Inc., B-178887, April 10, 1974, 74-1 CPD 182; B-176077 (6), January 26, 1973. Therefore, such determinations will not be disturbed absent a clear showing that the determination was arbitrary or unreasonable. Littleton Research and Engineering Corp., B-191245, June 30, 1978, 78-1 CPD 466; Charter Medical Corporation, B-186904, October 20, 1976, 76-2 CPD 352.

Although ADC has provided detailed technical arguments in support of its protest, we are unable to conclude on the record that the procuring agency's determination that its technical proposal was unacceptable was arbitrary or unreasonable. It appears from the record that the proposal was evaluated in accordance with the specifications and the stated evaluation criteria. ADC's proposal was found to be technically unacceptable and not reasonably susceptible of being made acceptable without major revisions on the basis of a comprehensive evaluation. The record does not indicate that this evaluation was improper or unfair or that MERADCOM abused its discretion in finding the protester's proposal unacceptable. We do not believe it is appropriate for our Office to question MERADCOM's technical judgment when the judgment has a reasonable basis merely because there may be divergent technical

opinions as to the acceptability of a proposal. Thus, we are unable to agree with ADC's claim that its proposal should have been regarded as acceptable. Struthers Electronics Corporation, supra. Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87.

The protester also contends that its proposal was evaluated unfairly and in a manner different from the other proposals. Where improper conduct on the part of the procuring agency is alleged, this Office has held that a protester or claimant has the burden of affirmatively proving its case; we have stated that "It must be emphasized \* \* \* that unfair or prejudicial motives will not be attributed to individuals on the basis of inference or supposition." Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458; A.R.F. Products, Inc., 56 Comp. Gen. 201, 208 (1976), 76-2 CPD 541. There is nothing in the written record to support ADC's contention that its proposal was evaluated unfairly or evaluated differently than the other proposals. Where the written record fails to clearly demonstrate alleged unfair treatment of the protester by individual agency officials, the protester's allegations are properly to be regarded as mere speculation. Joseph Legat Architects, supra.

Since no evidence has been offered by the protester to support its claim of unfair treatment, this allegation must be rejected.

Accordingly, the protest is denied.

  
Acting Comptroller General  
of the United States